IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 4643 of 2004

BASANTI DEVI
V/S
STATE & ORS.

Mr. BHARAT DEVASI, for the appellant / petitioner

Date of Order : 20.10.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioner.

By this writ petition, the petitioner seeks a direction to the respondents to make the payment of Rs.10,00,000/- for the betterment of newly born child like food, cloths, education, etc., and for the physical and mental agony to the family members and husband of the petitioner on account of failure of family planning operation and wrong advice of the respondent no.5. The other prayer made is that the respondent be directed not to disqualify the petitioner, and her husband in the case of their contesting election for the post of Sarpanch, and Ward Panch on the ground of birth of third child.

The factual aspect of the matter is that according to the petitioner, she got operated for sterilization on 11.1.2002, for which a certificate was obtained on 27.4.2004, being Annexure-1, and thereafter, she gave birth to a female child on 31.7.04, certificate in that respect is produced as Annexure-2.

In my view, the right to contest election is only statutory right, as held by Hon'ble the Supreme Court in Jyoti Basu Vs. Debi Ghosal, reported in 1982(1) SCC 691, and is available in accordance with the provisions of the relevant law only. May be that the petitioner got operated for sterilization, and may be that, that operation failed, for whatever reason, may be including, on account of the negligence of the doctor concerned. Such failure of operation may give right to the petitioners to claim adequate, appropriate, and sufficient compensation, by seeking remedy in accordance with the law, but then thereby, the petitioner, in my view, cannot claim the direction not to disqualify the petitioner, or her husband as prayed for in the writ petition, on the

face of existence of the provisions of Section 19(l) on the statute book.

So far as the claim for compensation is concerned, the petitioner is always free to file appropriate suit, or initiate further proceedings in appropriate competent court of law. The judgment relied upon by the learned counsel for the petitioner, being State of Haryana & Ors. Vs. Smt.Santra, reported in AIR 2000 SC 1888 was also a case, wherein the appeal went to Supreme Court in a litigation commenced by way of filing a suit for such compensation.

The writ petition is, therefore, dismissed summarily. However, it is made clear that this dismissal of the writ petition will not come in the way of the petitioner in initiating any litigation for compensation if the petitioner so chooses.

(N P GUPTA),J.

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